

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ROBERT SPALLONE, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

SOHO UNIVERSITY, INC.
d/b/a SOHO 544; and JOHN DOE,
individually,

Defendants.

C/A: 4:15-cv-1622-RBH

**ORDER
GRANTING
CONDITIONAL CERTIFICATION
UNDER FLSA**

This matter comes before the Court on the parties' Consent Order for Conditional Certification and to Authorize Notice to Putative Class Members in connection with Counts I and II of Plaintiff's Complaint (ECF 1) arising under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

The parties have consented to conditional certification of the FLSA collective action and to issuance of notice in the form attached to this Order.

The Court, therefore, Orders as follows:

1. This action will be conditionally certified as a collective action under 29 U.S.C. § 216(b).

2. The class shall be defined as: "All current and former employees of Soho 544 at anytime from August 1, 2012 until November 26, 2014¹ who were paid a direct, or hourly, rate less than the statutory minimum wage of seven and 25/100 (\$7.25) per hour and were required either to remit a portion of their tips into a tip pool or received funds from a tip pool."

¹ Defendants claim, on this date, that Soho changed ownership.

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3. The Notice and Consent (“Notice”) attached to this Order as **Exhibit 1** is appropriate to provide notice to the potential members of the class, via U.S. Mail and for allowing potential members of the class to opt-in, or join, the class. The mailing envelope shall have a return address as follows:

Class Action Lawsuit
Spallone v. Soho 544
Important Notice of Your Legal Rights
PLEASE OPEN & READ
P.O. Box 26170
Santa Ana, CA 92799

Enclosed, with the Notice, there will be a self-addressed, postage-paid envelope using the name and mailing address of Plaintiffs’ counsel for both the address and return address.

4. The Email Notice, **Exhibit 2**, is appropriate for sending Notice to potential class members via email. The subject line of the email shall read: Soho 544 Lawsuit – Please Read.

5. The Text Message Notice Via Cell Phone, **Exhibit 3**, is appropriate for sending Notice to potential class members via text message.

6. Notice shall be authorized to potential putative class members for a forty-five (45) day period of time. Putative class members will have forty-five (45) days from the date of the Notice to return their Consent form. Timeliness will be determined based upon the date that the Consent is post-marked.

7. The parties shall use the service of Third Party Administrator (“TPA”), Simpluris, Inc., to handle distribution of Notice and Consent. Defendants shall pay all fees and costs of the TPA.

8. Within three (3) calendar days of the entry of this Order, Defendants shall provide, in electronic format, if available, the TPA, for all putative members of the putative class, the following information:

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- (a) Names;
- (b) All known mailing addresses;
- (c) All known email addresses;
- (d) Last known cell telephone number; and
- (e) Telephone number listed in employee file.

9. The TPA shall, within five (5) calendar days of the entry of this Order:

- (a) Mail, via first class U.S. mail, a copy of the Notice and Consent, to all members of the putative class as outlined above; and
- (b) Email, to all members of the putative class with an email address, a copy of the Notice and Consent as outlined above.

10. If the Notice and Consent are returned as undeliverable, via U.S. Mail only, for any putative class member, the TPA will send the Text Message Via Cell Phone, **Exhibit 3**, to all telephone numbers, as outlined above, for that putative class member.

11. Within ten (10) days of the close of the Notice Period, Counsel for the Defendants will provide Counsel for the Plaintiffs with all information provided to Simpluris for each opt-in Plaintiff.

12. If the TPA receives any completed Consents, the TPA shall, within twenty-four (24) hours of receiving the Consent, email a copy of each to counsel for Plaintiffs to be filed with the Court. The TPA shall also, within five (5) calendar days, mail the original consent to counsel for Plaintiffs.

13. Within sixty-five (65) days of the entry of this Order, the TPA shall send the identical report to counsel for the parties, showing all activity of the TPA in this action, redacting the names and contact information of all putative class members who did not opt-in to the

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lawsuit. This shall include a redacted list of all putative class members and whether the TPA mailed, emailed, and sent a text message, along with indications of which of these methods, if any, were unsuccessful. This report shall also include any telephone calls received from any putative class member, along with what subsequent action, if any the TPA took.

14. The Parties have expressly agreed that Plaintiffs have reserved all rights to move for equitable tolling from May 18, 2015 through the date of this order. This consent motion and order does not prejudice Plaintiffs' rights to move for equitable tolling for this time period or Defendants' rights to oppose such a motion. The Parties have used dates, in the notices, as if this court were to grant such a motion; however, this is only for the purpose of obtaining the largest number of putative class members now, instead of the possibility of having to conduct a second notice period.

14. This Court's February 2, 2016 Order (ECF 53) to Stay Action and Toll Statute of Limitations shall be lifted immediately upon the entry of this Consent Order.

IT IS SO ORDERED.

February 9, 2016
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge